PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR OCTOBER 29, 2020 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, OCTOBER 29, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, OCTOBER 28, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: TELEPHONIC APPEARANCES ARE STRONGLY ENCOURAGED FOR CIVIL LAW AND MOTION MATTERS. (PLACER COURT EMERGENCY LOCAL RULE 10.28.) More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard at **8:30 a.m.** in **DEPARTMENT 42** located at 10820 Justice Center Drive, Roseville, California.

1. S-CV-0020322 PALOS, ANTHONY v. PALOS, STEVEN

This tentative ruling is issued by the Honorable Todd D. Irby. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 30:

Assignee's motion to set aside the two March 13, 2019 orders is denied without prejudice. The assignee served only plaintiff Anthony Palos and defendant Steven Palos with the current motions. The court file reflects that both Anthony Palos and Steven Palos are represented by counsel. The court declines to entertain the motion until such time as the assignee properly serves both parties and their counsels of record with the motion. (Code of Civil Procedure sections 1010, 1014; see *Reynolds v. Reynolds* (1943) 21 Cal.2d 580; *Scarpel v. East Bay St. Rys.* (1940) 42 Cal.App.2d 32.)

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2. S-CV-0042080 PACIFIC UNION INT'L v. LUDWICK, ERIK

Defendants' Motion for Reconsideration and/or Code of Civil Procedure section 473(b) Relief

In this completely unnecessary motion, defendants seek an order "to strike, invalidate and/or vacate the August 18, 2020 Order to Continue Trial."

On August 7, 2020, plaintiff's counsel sent a letter and a proposed stipulation to defense counsel Nagano to continue the trial date from September 21, 2020 to March 29, 2021. The stipulation also provided "that discovery be considered closed and that only pre-trial expert discovery related deadlines dates and deadlines shall be calculated based on the new trial date." Defense counsel Nagano signed and returned the stipulation, which was subsequently approved and filed by the court. Having apparently failed to read the stipulation he signed, Mr. Nagano then demanded that the stipulation be withdrawn as he had not agreed to close discovery. In support of this motion Mr. Nagano declares he signed the stipulation due to his "mistake, inadvertence, surprise, or excusable neglect as I relied upon the Plaintiff's attorney's August 7, 2020 letter while not realizing that the alleged stipulation presented to the Court said something different then [sic] the Plaintiff's attorney's letter, and something different then [sic] the unseen [proposed] order, again, each saying something different." However, overlooking his own mistake in not reading the stipulation, Mr. Nagano goes an extra mile by leveling an unfounded, blame-shifting accusation against plaintiff's counsel. He declares "I can only conclude that the discrepancies between the Plaintiff's attorney's August 7, 2020 letter, the stipulation and [proposed order] submitted to and filed with the Court on August 12, 2020, and the unseen Ordered signed and filed by the Court on August 18, 2020 were part of intention, misleading and/or bad faith tactics." The accusation is unwarranted. On September 8, 2020, upon request, plaintiff's counsel signed and returned to defense counsel a hard copy of a stipulation to modify the order to continue the discovery deadlines. For reasons not clear to plaintiff's counsel or to the court, however, this stipulation has not been provided to the court by attorney Nagano. Plaintiff's counsel, having already stipulated, expresses no objection to the court continuing trial-related dates to track with the already established trial date of March 29, 2021. Indeed, plaintiff's counsel wonders, as does the court, why this motion was not dropped by defendant. The court will do what defense counsel should have done – the motion is dropped. The motion is essentially moot as there is no disagreement by the parties. Discovery and motion deadlines will track with the trial date.

Finally, the court will make no comment or judgment as to which is more concerning – that defense counsel chooses to make unjustified accusatory remarks about plaintiff's counsel when it was his own failure to read the stipulation that precipitated this issue – or why defense counsel did not drop this motion so that the already overburdened court did not have to waste precious time and resources in considering this unnecessary motion.

3. S-CV-0042659 FAULKNER, MERCEDES v. BRAZIL, ANASTASIA

The motion for summary judgment is continued to Thursday, February 19, 2021 at 8:30 a.m. in Department 42 to be heard in conjunction with the other pending motion for summary judgment.

4. S-CV-0043196 LASCOE, PAMELA v. AMAZING FACTS INT'L

Plaintiff's Motion for Leave to File Amended Complaint

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The motion is granted. In the current request, plaintiff seeks leave to file a verified first amended complaint. The amendments, which are identified in the Schellar declaration and included in the proposed pleading submitted with plaintiff's proposed order, will remove several causes of action; correct various clerical errors in the pleading; and add a new cause of action for violations under Civil Code section 52.1, often referred to as Bane Act claims. The court may permit a party to amend a pleading in the furtherance of justice and on such terms as may be just. (Code of Civil Procedure sections 473(a)(1), 576.) Such leave is usually exercised liberally to permit amendments. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428.)

A review of the briefing shows plaintiff substantially complied with the requirements of California Rules of Court, Rule 3.1324. Further, there has been an insufficient showing of prejudice to defendant. Contrary to defendant's assertions, the elimination of unnecessary allegations will assist the parties and the court to focus on the actual issues remaining in the action. Turning to the insertion of the Bane Act claim, it cannot be definitively determined from the face of the

proposed amendment that the claim is barred by the statute of limitations. It appears that the pleaded Bane Act claim may fall under the two year statute of limitations under Code of Civil Procedure section 335.1 rather than a one year statute of limitation under Section 340. Defendant also retains the ability to challenge the sufficiency of this new claim. For these reasons, the motion is granted.

Plaintiff shall file and serve her first amended complaint by November 13, 2020.

5. S-CV-0043468 SIMPSON, MELODY v. BANK OF NY MELLON

The motion to compel further responses to production of documents is continued to Thursday, November 5, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

6. S-CV-0044128 PARKER, TONYA v. NATIONSTAR MORTGAGE

The motion for judgment on the pleadings is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

7. S-CV-0044290 CLARK'S CORNER INVEST v. JLM FINANCIAL

Defendant Farid Dibachi's Motion for Reconsideration

After consideration of the supplemental briefing filed by the parties, defendant's motion is continued to Thursday, January 28, 2021 at 8:30 a.m. in Department 42. The parties are to file simultaneous supplemental briefing 10 days prior to the continued hearing date providing the court with information regarding the outcome of the motion to vacate the underlying corrected judgment of confession pending in the New York court.

The court now turns to the posting of an undertaking. Initially, the court granted the stay of enforcement with the understanding the motion pending in New York would be resolved within a few months. Several months have now passed and the motion before the New York court is still pending. The necessity of an undertaking arises in light of this unexpected delay. Code of Civil Procedure section 1710.50(c)(1) allows for the posting of an undertaking in an amount determined to be just so long as the undertaking does not exceed double the amount of the judgment creditor's claim. Plaintiff contends an undertaking of $563,072.25,

which is one and half times the amount of the judgment amount, should be posted as an undertaking by defendant Farid Dibachi. Defendant, for his part, contends the undertaking should be no more than $25,833.33, which defendant asserts is his proportionate share of liability after taking into account a $155,000 payment already made on the judgment.

The sister-state judgment currently entered is in the amount of $375,381.50 against both JLM Financial and Farid Dibachi. The court is not persuaded that $25,833.33 is sufficient in this instance. Nonetheless, the court is also not persuaded that an undertaking of $563,072.25 is proper. The court determines that defendant Farid Dibachi shall post an undertaking in the amount of $220,381.50, which provides Mr. Dibachi with the benefit of the $155,000 credit alleged in his supplemental briefing.

The stay of enforcement under Section 1710.50 is subject to Mr. Dibachi posting the $220,381.50 undertaking by November 20, 2020. Plaintiff may seek to dissolve the stay of enforcement if defendant fails to post the undertaking by this date.

8. S-CV-0044446 ASAMURAI, DEENA v. FIRST TECH FED CREDIT UNION

Defendant's Motion for Joinder of Aerotek and Allegis

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The motion is denied. In the current request, defendant seeks joinder of corporate entities Aerotek and Allegis asserting the two are indispensable parties. Determining whether an absent party must be joined in an action is a two-step analysis. First, the court must determine whether the absent party is a necessary party under Code of Civil Procedure section 389(a). (*Verizon California Inc. v. Board of Equalization* (2014) 230 Cal.App.4th 666, 679.) Once it is determined the absent party is a necessary party, the court turns to the second part of the analysis, i.e. whether the party is also indispensable under Code of Civil Procedure section 389(b). (*Ibid*.) The court considers four factors in determining whether the absent party is indispensable: (1) the extent a judgment may be prejudicial to the absent party; (2) the extent to which the prejudice can be lessened or avoided; (3) whether a judgment rendered in the party's absence will be adequate; and (4)

whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. (*Deamweaver Andalusians, LLC v. Prudential Insurance Co. of America* (2015) 234 Cal.App.4th 1168, 1176.) The court reviews the motion keeping this in mind.

Absent Party Aerotek

A necessary party is one whose absence will not afford complete relief in the action or who claims an interest in the action and the party's absence will impair/impede the ability to protect the interest or leave other parties with the risk of additional liabilities or inconsistent obligations. (Code of Civil Procedure section 389(a).) The court turns to the allegations within the complaint as a starting point for this inquiry. Plaintiff brings this PAGA action alleging First Technology, and other doe defendants, failed to compensate the aggrieved employees along with failing to provide meal periods and rest breaks. (see generally Complaint.) The term "aggrieved employees" refers to hourly workers or non-exempt employees that worked for First Technology between April of 2019 and August 2019. (Id. at ¶19.) Plaintiff goes on to allege:

> 22. Defendants had the authority to hire and terminate Plaintiff and the other aggrieved employees, to set work rules and conditions governing Plaintiff's and the other aggrieved employees' employment, and to supervise their daily employment activities.
>
> 23. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other aggrieved employees' employment for them to be joint employers of Plaintiff and the other aggrieved employees.
>
> 24. Defendants directly hired and paid wages and benefits to Plaintiff and the other aggrieved employees.

(Id. at ¶¶22-24.)

Based upon the allegations within the complaint, the court reviews First Technology's submitted evidence to determine whether Aerotek is a joint employer with authority to hire, fire, pay benefits and wages, and supervise the aggrieved employee's daily activities so that Aerotek's absence from the litigation would not afford complete relief; would impair the ability of the party to protect its interests; or would expose the parties to additional liabilities or inconsistent obligations. First Technology assumed operation of the Rocklin Call Center, which is the employment location subject to this litigation, from Addison Avenue

around December 2018. (Penna declaration ¶4.) This included assuming the staffing agreement between Addison Avenue and Aerotek. (Ibid.) This agreement was originally entered into on October 18, 2010 and continued on as a month-to-month agreement. (Id. at Exhibit A, ¶1.) According to the terms of the agreement, Aerotek would provide contract employees who would be under First Technology's "management and supervision at a facility or in an environment" controlled by First Technology. (Id. at Exhibit A, ¶2.1.) First Technology was also responsible for control, management, and supervision of all contract employees along with deciding whether to retain or terminate them. (Id. at Exhibit A, ¶¶2.2, 11.) Aerotek agreed to provide the salary, benefits, withholding deductions and payments, worker's compensation, and unemployment tax payments. (Id. at Exhibit A, ¶3.) Aerotek would then submit weekly invoices to First Technology for the services rendered by the contract employees. (Id. at Exhibit A, ¶4.)

Based upon the terms of this agreement, First Technology – not Aerotek - was responsible for all hiring, firing, and supervision of the aggrieved employees subject to this action. Aerotek's responsibilities were primarily focused on providing contract employees along with handling payment of their salaries and benefits. According to the terms of the agreement, Aerotek's involvement in the supervision of the aggrieved employees was limited with the primary responsibility falling on First Technology. Aerotek's handling of salary and benefit payments also appears limited under the agreement with Aerotek providing services more along the lines of payroll management rather than providing substantive determinations regarding the hours worked by contract employees. The evidence presented here does not suggest the inability to obtain complete relief without Aerotek. To reiterate, the terms of the agreement between the parties places the primary responsibility of supervision and control of the aggrieved employees with First Technology. Nor is the evidence sufficient enough to show a party will be prejudiced by an inability to protect its interest, risk additional liabilities, or risk inconsistent obligations since Aerotek's payroll and benefit responsibilities were limited to management rather than policy determinations.

The distinction between these responsibilities is further crystalized when comparing the 2010 agreement to Aerotek and First Technology's March 4, 2020 Services Agreement. (Penna declaration, Exhibit B.) The provisions of the 2020 agreement have Aerotek and First Technology sharing the hiring, firing, and supervisory roles, which is not present in the 2010 agreement. (Id. at Exhibit B, ¶¶1.2, 2.6, 2.7, 16.15 [Exhibit A].) Aerotek may very well be considered a necessary party under the terms of the 2020 agreement, although the court makes

no determination as such. The 2020 agreement, however, is not controlling here. Based upon the foregoing, First Technology has not made a sufficient showing that Aerotek is a necessary party and the court need not continue the second prong of the analysis.

Absent Party Allegis

First Technology also contends absent party Allegis should be joined in this litigation as an indispensable party. The reasoning for Allegis' joinder is asserted in very cursory terms. The argument appears to be that Allegis is the parent corporation of Aerotek and becomes an indispensable party due to this status. For the reasons discussed above, Aerotek is not an indispensable party, which in turn means Allegis cannot be an indispensable party under this proposed theory. Moreover, a parent company is not automatically liable for the contract liabilities or torts committed by a subsidiary. (see c.f. *Waste Management, Inc. v. Superior Court* (2004) 119 Cal.App.4th 105, 110; *Marr v. Postal Union Life Insurance Co.* (1940) 40 Cal.App.2d 673, 681.) The terms of the 2010 agreement do not demonstrate Allegis had any management or control function. First Technology has not made a sufficient showing Allegis should be a party to the action, necessary or otherwise.

Disposition

The motion is denied in its entirety for the reasons set forth above.

9. S-CV-0044668 CLOUSE, CRAIG v. APEX APPRAISAL SERVICE

The two motions to compel further discovery responses are continued to Thursday, November 5, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

10. S-CV-0044676 GARDUNO, SHANTINA v. BAUER, ROBERT
S-CV-0044896 SILVA, KIMBERLY v. BAUER, ROBERT

Defendant Robert Bauer's Motion for Consolidation

As an initial matter, defendant's request for judicial notice is granted under Evidence Code section 452. The motion is granted. Placer Court cases Shantina Garduno v. Robert Bauer, SCV-44676, and Kimberly Silva v. Robert Bauer, SCV-44896, are consolidated for all purposes including trial. Placer Court Case No.

SCV-44676 shall be the lead case and all future court filings shall use this case number.

All hearing dates set in SCV-44896 are vacated. The court confirms the case management conference currently set for November 10, 2020.

11. S-CV-0044822 WALLACE, JONATHAN v. TOP SHELF MOTORS

The motion to compel arbitration is continued to Thursday, December 3, 2020 at 8:30 a.m. in Department 42. The court is informed that the parties will be submitting a stipulation to participate in arbitration.

12. S-CV-0045182 DRM INSURANCE SERVICES v. NEW LEGEND

The demurrer and motion to strike are continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

13. S-CV-0045284 PLASTIKON v. JBR, INC.

Defendant Peter Rogers' Demurrer to the Complaint

Ruling on Request for Judicial Notice

Defendant's request is granted under Evidence Code section 452.

Ruling on Demurrer

In the current demurrer, defendant Peter Rogers challenges the sufficiency of the fraud claim alleged in the third cause of action. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court reviews the fraud cause of action keeping this in mind.

The elements of a fraud claim include (1) a misrepresentation through either false representation, concealment, or nondisclosure; (2) scienter or knowledge of the falsity regarding the misrepresentation; (3) intent to induce reliance; (4) justifiable

reliance; and (5) damages. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) Fraud allegations must be pleaded with particularity so as to include facts stating the how, when, where, to whom, and by what means any misrepresentations were made to a plaintiff. (*Id*. at p. 645.) In the complaint, plaintiff alleges defendant Rogers made several statements during a May 22, 2017 meeting including the need for plaintiff's k-cup pod rings; the quantity and regularity of monthly orders for JBR to purchase the rings; JBR was using plaintiff's rings; and the rings would be used to fulfill the orders of JBR's largest customer, Costco. (Complaint ¶54.) Plaintiff goes on to allege these statements were false as Rogers only made these representations in order to obtain plaintiff's certification of the rings but not actually use plaintiff's rings or pay for its product, obtaining plaintiff's proprietary information to engineer its own rings. (Id. at ¶¶30, 31, 55, 56.) Plaintiff relied upon these misrepresentations, foregoing engineering and research that would customarily be assessed under such circumstances along with suffering damages in excess of $6.7 million. (Id. at ¶¶56, 57.) These allegations are sufficient to support the third cause of action against defendant Rogers. Thus, the demurrer is overruled.

Defendant Peter Rogers shall file and serve his answer or general denial by November 13, 2020.

Defendant JBR's Demurrer to the Complaint

In the current demurrer, defendant JBR challenges the sufficiency of all three causes of action. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court reviews the fraud cause of action keeping this in mind.

First Cause of Action – Breach of Contract

A breach of contract claim must allege (1) the existence of a contract between the parties; (3) plaintiff's performance or excuse for performance; (3) defendant's failure to perform; and (4) damages. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.app.3d 1371, 1388.) The complaint alleges the parties entered into a contract, part oral and part written, in 2016 and 2017 where plaintiff would develop and certify a compostable ring for defendant JBR's single serving k-cup pods. (Complaint ¶¶18-27, 29, 36.) The parties agreed to minimum monthly

ring orders of 280 million at a reduced price of $0.0239 per unit pending certification of the rings. (Id. at ¶¶29, 36.) JBR also order sample products for testing and evaluation through written purchase orders. (Id. at ¶37.) Plaintiff performed under the terms of the agreement, completing certification of the rings and providing sample quantities. (Id. at ¶38.) JBR, however, repudiated the agreement after the certifications were obtained and failed to order the monthly minimum, resulting in at least $6.7 million in damages. (Id. at ¶¶39, 40.) These allegations are sufficient to allege a breach of contract claim against JBR.

Second Cause of Action – Misappropriation of Trade Secrets

A claim for misappropriation of trade secrets requires (1) plaintiff to own a trade secret; (2) defendant acquired, disclosed, or used the trade secret through improper means; and (3) defendant's actions damages plaintiff. (Civil Code section 3426.1; *Sargent Fletcher, Inc. v. Able Corp.* (2003) 110 Cal.Ap.4th 1658, 1665.) Plaintiff alleges the parties agreed to keep confidential various proprietary design developments of plastic products, which included the certification of the ring for the k-cup pods. (Complaint ¶¶42, 46-48.) After plaintiff shared the ring design specifications and obtain certification, JBR took this proprietary information, circumventing plaintiff and seeking manufacturing of the rings from other parties. (Id. at ¶48.) Plaintiff subsequently suffered a loss of revenue. (Id. at ¶49.) This is sufficient to allege misappropriation of trade secrets.

Third Cause of Action – Fraud

The elements of a fraud claim include (1) a misrepresentation through either false representation, concealment, or nondisclosure; (2) scienter or knowledge of the falsity regarding the misrepresentation; (3) intent to induce reliance; (4) justifiable reliance; and (5) damages. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) Fraud allegations must be pleaded with particularity so as to include facts stating the how, when, where, to whom, and by what means any misrepresentations were made to a plaintiff. (*Id*. at p. 645.) Further, fraud allegations against a corporate defendant require the names of individuals who made misrepresentations, their authority to speak on behalf of the corporation; whom they spoke to; what was said or written; and when it was said or written. (*Ibid*.)

Plaintiff alleges the general manager of JBR and its CEO made several statements on May 1, 2017 and May 22, 2017 including the need for plaintiff's k-cup pod rings; the quantity and regularity of monthly orders for JBR to purchase the rings; JBR was using plaintiff's rings; and the rings would be used to fulfill the orders of

JBR's largest customer, Costco. (Complaint ¶54.) Plaintiff goes on to allege these statements were false and only made in order to obtain plaintiff's certification of the rings but not actually use plaintiff's rings or pay for its product, obtaining plaintiff's proprietary information to engineer its own rings. (Id. at ¶¶30, 31, 55, 56.) Plaintiff relied upon these misrepresentations, foregoing engineering and research that would customarily be assessed under such circumstances along with suffering damages in excess of $6.7 million. (Id. at ¶¶56, 57.) These allegations are sufficient to support the third cause of action against defendant JBR. Thus, the demurrer is overruled.

Defendant JBR, Inc. shall file and serve its answer or general denial by November 13, 2020.

JBR's Motion to Strike Complaint

The motion is denied. A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading or to strike allegations not drawn in conformity with the laws of the state or an order of the court. (Code of Civil Procedure section 436(a), (b).) In the current request, JBR contends that the allegations in paragraphs 10 through 15; lines 6:27-7:1 in paragraph 17; and lines 18:17-21 in paragraph 55 as not essential to the allegations within the three causes of action. The challenged language is relevant to the plaintiff's allegations, which tend to allege JBR entered into a business relationship with plaintiff in order to procure proprietary information and certification of the k-cup pod rings in part to respond to misleading marketing JBR was involved in regarding the biodegradability of its k-cup pods. For these reasons, the motion is denied.

14. S-CV-0045344 LEA, DARLENE v. CHAPMAN, CYNTHIA

The demurrer is continued to Friday, October 30, 2020 at 8:30 a.m. in Department 3 to be heard in conjunction with the pending motion for consolidation.

15. S-PR-0009452 IN RE THE REED FAMILY LIVING TRUST

The motion to disqualify counsel is continued to Thursday, December 3, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.